



September 6, 2018

[*CB-CDA 2018-188*]

NOTICE OF THE BOARD

File: Commercial Radio Stations – Reproduction / Stations de radio commerciale Reproduction (2012-2018) [CSI; Connect/SOPROQ; Artisti]

On September 15, 2017, CSI, Connect/SOPROQ, Artisti, and CAB (jointly the “Parties”) wrote to the Board asking that the Board vary some previously certified tariffs and certify some new ones, pursuant to an agreement among the Parties that has also been acknowledged by a large number of radio stations in Canada. While the tariffs previously certified by the Board related to various dates within the period 2012 to 2017, the request referred to all dates within this period as the “First Settlement Tariff”. In addition, the tariffs for 2018 were referred to as the “Second Settlement Tariff”.

The Board takes note of section 17 of the First Settlement Tariff, which reads as follows:

Any amount that is otherwise due or payable pursuant to this tariff on or before May 1, 2016, shall be due or payable no later than September 1, 2016, and shall be increased by using the multiplying interest factor (based on the Bank Rate) set out in the following table with respect to each period. [Table omitted]

The Board further takes note of the following facts.

1. Section 17, as currently drafted, cannot be certified. Section 17 creates a payment obligation in the past (September 1, 2016). If the Board is to certify a clause like section 17, it must set a date in the future, for example, December 31, 2018.
2. The table accompanying section 17 is incorrect and must be changed. For one thing, that table begins in 2011 and ends in May 2016. The correct tables should begin in November 2012 and end in December 2017 for CSI. For Connect/SOPROQ and Artisti, the table should begin in January 2012 and end in December 2017. Calculation of the table is necessarily recursive: as such, it is a function of its beginning and end points, as well as the path of the Bank Rate throughout that time.
3. There is no equivalent of section 17 (with its accompanying table) in the Second Settlement Tariff.

4. Any tables of interest factors certified by the Board would only apply to such radio stations that did not acknowledge the agreement between CAB and the Collectives. Pursuant to section 70.191 of the *Copyright Act*, the tariff does not apply to a party that has an agreement with the Collectives.

5. The request by the Parties to vary the tariffs certified in 2016 asks that the Board vary those tariffs by substituting the portions of the First Settlement Tariff that would apply to those dates. However, the request by the Parties contained a specific table of interest factors, rather than a general request to certify those factors as might apply for the dates of the variance.

Having regards to the foregoing, the Parties shall:

1. Comment on the Board's recital of facts;
2. Explain why there was a table of interest factors in the First Settlement Tariff but not in the Second Settlement Tariff;
3. Indicate whether the Board has jurisdiction to certify a table of interest factors other than the one contained in the First Settlement Tariff; and
4. Indicate whether the Board should include tables of interest factors consistent with fact 2 above, omit all interest factors, or do something else.

The Parties shall respond jointly to this request, if possible, by no later than **Friday, September 14, 2018**.

In the event the Parties respond separately, they may reply to one another by no later than **Friday, September 21, 2018**.



Gilles McDougall
Secretary General